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March 4, 1986

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Via Hand Delivery

Mr. Andrew Scanlon
Federal Trade Commission
Bureau of Competition
Pre-Merger Notification Office
Room 301
Sixth & Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Hart-Scott-Rodino
Notification

Dear Mr. Scanlon:

Over the past four months, I have discussed with you the notification requirements of Section 7A of the Clayton Act (Hart-Scott-Rodino), and its applicability to a proposed acquisition of a cable television company by a newly formed limited partnership. This letter confirms my understanding, based upon these discussions, that the notification provisions of Hart-Scott-Rodino will not apply to that transaction, which is described below. This request is made pursuant to Section 803.30 of the rules. In essence, notification requirements will not apply because the acquiring and acquired persons in this transaction do not satisfy the minimum size of person test as defined in the Act.

For the notification requirements to apply the following conditions must exist. First, with respect to an acquired party not engaged in manufacturing, its total assets

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must be at least \$10 million. Second, the acquiring party in such a transaction must have total assets or annual net sales of \$100 million or more. Alternatively, notification will be required where the acquired person has annual net sales or total assets of at least \$100 million, while the acquiring party has total assets or annual net sales of at least \$10 million.

In the contemplated transaction, a newly formed limited partnership will acquire the assets of a cable television company. The acquiring limited partnership will, upon formation, have total assets of approximately \$125 million, which will consist of both debt and equity contributions. However, upon consummation of the proposed purchase of the cable system, the limited partnership will expend \$107 million of its \$125 million in cash. The majority of this cash payment will be to the existing stockholders of the cable television company, while the remaining portion of the expenditure will be utilized to retire the cable system's existing liabilities, including debt, tax liabilities, and certain prepayment penalties. Thus, because \$107 million will immediately "pass through" to the stock holders of the cable company, and its creditors, the size of the acquiring limited partnership is \$18 million. Of course, as a limited partnership, it is the ultimate parent entity of the acquiring party.

Because the acquiring person has assets that exceed \$10 million, but are less than \$100 million, for the notification requirements to apply the acquired person must have annual net sales or total assets of at least \$100 million. 15 USC §18A(a)(2)(c). The acquired person in this instance is a cable company that is its own ultimate parent entity. This is because 90 percent of the cable company is currently owned by a large number of separate irrevocable trusts, none of which holds 50 percent or more of the stock or has the contractual power to designate a majority of the cable system's directors. Section 801.11 of the rules explains that to compute the annual net sales of a person, reference is made to its last regularly prepared annual statement of income and expense (dated within 15 months of notification or consummation of the acquisition). With respect to the computation of total assets, reference is made to the person's last regularly prepared balance sheet. Reference to the appropriate financial statements demonstrates that the cable system's annual net sales are approximately \$20 million, and that the total assets of the cable system after depreciation are approximately \$28.8 million. These assets, before depreciation, have a value of approximately \$42.5 million.

From the analysis discussed above, it is clear that the acquired party does not meet the minimum size of person test to

(b) The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission to take effect.

(a) The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(b) The Commission, before prescribing any requirements as to accounts, records, or documents, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(P) The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

MEMORANDUM
TO THE CHIEF OF STAFF, U.S. AIR FORCE

Sec. 221. (a) Upon application of one or more telephone companies for authority to consolidate their properties or a part thereof into a single company, or for authority for one or more such companies to acquire the whole or any part of the property of another telephone company or other telephone companies or the control thereof by the purchase of securities or by lease or in any other manner, when such consolidated company would be subject to this Act, the Commission shall give reasonable notice in writing to the governor of each of the States in which the physical property affected, or any part thereof, is situated, and to the State commission having jurisdiction over telephone companies, and to such other persons as it may deem advisable, and shall afford such parties a reasonable opportunity to submit comments on the proposed transaction. A public hearing shall be held in all cases where a request therefore is made by a telephone company, an association of telephone companies, a State commission, or local governmental authority. If the Commission finds that the proposed consolidation, acquisition, or control will be of advantage to the persons to whom service is to be rendered and in the public interest, it shall certify to that effect and thereupon any Act or Act of Congress making the proposed transaction unlawful shall not apply. Nothing in this subsection shall be construed as in anywise limiting or restricting the powers of the several States to control and regulate telephone companies.

on September 1st, and were succeeded by a panel on science by Professors H. H. Price, C. D. Morrison, Mr. Dens, represented Aug. 1, 1915, by Prof. G. E. Smith. The committee of one or more physicians recommended for authority to recommend those physicians who should be appointed to the panel on science.

(b) as subject to the provisions of section 3(1), relating to this Act, shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange services constitutes international or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

(c) For the purposes of administering this Act as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone communication, and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service, such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the commission may prescribe.

(d) In making a valuation of the property of any who is reported to the Commission, after making the classification authorized in this section, may in its discretion value only that part of the property of such carrier determined to be used in interstate or foreign telephone toll service.

COMPTON AND REEDS' CANTERBURY

892. 222.00 (a) For purposes of this section:

Sec. 1 (1) Subject to the provisions of subsection (b), the Federal Communications Commission may, by regulation, make such rules and regulations as are necessary for the administration of the Communications Act of 1934, including rules and regulations for the administration of new and supplemental telecommunications services, and the administration of new and supplemental telecommunications services under the Communications Act of 1934, as may be required to meet traffic, transmitted within the United States, between the United States and other countries, in certain cases which are described in section 2 (which amended section 1534). The provisions of subsection (a) shall apply to these new services or objects at the end of the longer period of time than the duration of the operation of the Act.

FIG. 4. The conventional speech in section I which is intended to show that the validity of the terms of any other service based contract ("Model") in the distribution of authorized instruments issued between any domestic money center and any international money center of such countries was rendered void before June 1, 1951.